



**IT IS ORDERED as set forth below:**

**Date: June 11, 2010**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In Re:	:	Chapter 7
	:	
DIPLOMAT CONSTRUCTION, INC.,	:	Case No. 09-68613-MGD
	:	
Debtor.	:	Judge Mary Grace Diehl
	:	

**ORDER DENYING MOTION FOR ALLOWANCE AND PAYMENT OF  
ADMINISTRATIVE EXPENSE**

Before the Court is Budgetel, Inn, Inc.'s ("Budgetel") Motion for Allowance and Payment of Administrative Expense ("Motion"). (Docket No. 193). The matter came on for hearing on June 10, 2010. Present at the hearing were Lee Goldstein on behalf of Budgetel, Jim Sacca for the Debtor, Joshua Lewis for State Bank of Texas, and Vivieon Kelley for the United States Trustee. State Bank of Texas filed a written objection to the Motion prior to the hearing.

Debtor filed a chapter 11 voluntary petition on April 3, 2009. Debtor owned and operated a 192-room hotel located near Hartsfield-Jackson Atlanta International Airport. On November 20, 2009, confirmation was denied and relief from the automatic stay was granted to State Bank of

Texas. (Docket Nos. 159 & 160). The State Bank of Texas obtained a court-appointed receiver to take over the hotel operations on December 29, 2009. Apparently, Debtor continued to operate the hotel after relief from stay was granted and until a receiver was appointed. The case was converted to Chapter 7 on May 21, 2010.

Budgetel seeks allowance of a Chapter 11 administrative claim for the services it provided to Debtor for the period December 1, 2009 to March 31, 2010. Budgetel represents that it had no knowledge of the Debtor's bankruptcy when it entered into the franchise contract. The Court never approved any contract between Debtor and Budgetel. Nonetheless, Budgetel represents that it performed under the contract and that Debtor availed itself of Budgetel's services, including the hotel's continued operation using Budgetel's signage and literature. Budgetel seeks allowance and payment of the services it provided during this period on the basis that the estate benefitted from its services.

The only period of service that would potentially create an administrative claim for Budgetel was the time of service that predated the appointment of the receiver. The services provided from December 1, 2009 to December 28, 2009 could arguably be considered necessary or actual to preserve the estate. However, after appointment of the receiver, Budgetel's recourse for the continued provision of services would be limited to actions against the receiver. At the hearing, Budgetel stated that it had been paid for its services for the period in which Debtor operated the hotel, December 1, 2009 to December 28, 2009. Accordingly, it is hereby

**ORDERED** that Budgetel's Motion is **DENIED**.

The Clerk is directed to serve a copy of this Order on all parties at interest.

**END OF DOCUMENT**